

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

GARRY F. SMITH,)	
)	
Petitioner,)	
)	
vs.)	Case No. 05-0063-CV-W-GAF-P
)	
DAVID DORMIRE, et al.,)	
)	
Respondents.)	

ORDER DENYING PETITION FOR A WRIT OF HABEAS CORPUS

Petitioner seeks habeas corpus relief pursuant to 28 U.S.C. § 2241, claiming that he is entitled to jail credit toward his federal sentence from the date he was arrested by state authorities to the date he was sentenced in federal court (September 26, 1993, to September 2, 1994, or 341 days).

The government argues that petitioner is entitled to no relief:

Petitioner is not entitled to credit against his federal sentence for the time he was in Missouri's primary custody . . . through the imposition of his federal sentence The reasons for this conclusion are the following.

First, petitioner's appearance in federal court pursuant to a writ of habeas corpus ad prosequendum did not relinquish Missouri's primary jurisdiction over petitioner. Hence, petitioner remained in Missouri's primary custody through petitioner's federal sentencing

Second, petitioner has received credit against his Missouri sentences for the time he was in Missouri's primary custody from his arrest through the imposition of his federal sentence. 18 U.S.C. § 3585(b) prohibits credit against his

federal sentence for time spent in custody before imposition of his federal sentence that is credited against another sentence.

Lastly, United States Sentencing Guidelines § 5G1.3 is not applicable to petitioner's federal sentence because petitioner was not subject to an undischarged term of imprisonment at the time of his federal sentencing

Doc. No. 7, pp. 4-5 (United States' answer) (citations omitted). The government's argument is legally correct and supported by the record.

Accordingly, it is **ORDERED** that this petition for a writ of habeas corpus is denied, and this case is dismissed with prejudice.

/s/ Gary A. Fenner
GARY A. FENNER
UNITED STATES DISTRICT JUDGE

Kansas City, Missouri,

Dated: 12/13/05.